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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/404,729	09/24/1999	ANDREW A. BERLIN	D/99612Q5	8725

25453 7590 07/19/2005

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EXAMINER
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ELISCA, PIERRE E

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/404,729

Applicant(s)

BERLIN ET AL

Examiner

Pierre E. Elisca

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/15/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This office action is in response to Applicant's response, filed on 12/15/2003.
2. Claims 1-13 are pending.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

**A person shall be entitled to a patent unless -**

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

4. Claims 1-13 are rejected under 35 U.S.C. 102 (b) as being anticipated by Abelow (U.S. pat. No. 5,999,908).

**As per claims 1-13**, Abelow discloses a product or service that contains a microprocessor and a facility for communication, comprising:  
multiple actuators, each of the multiple actuators having an actuator controller that is responsive to price information to control an applied force by the actuator on the structure (see., col 2, lines 13-27, specifically wherein it is stated that multiple actuators or computer hardware, software and communications technologies to construct a module that is built into certain products and services, to establish a network);

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an electrical conductor for transmitting voltage and accumulating charge, referred to as a marketwire; the marketwire being connected to each actuator controller to convey price information to the actuator controllers by analog variations in electrical characteristics of the marketwire (see., col 76, lines 61-65, specialized feedback systems may also provides price information, col 70, lines 60-11, col 1, lines 56-67, col 2, lines 1-5, productivity measures is readable as a sensor).

#### RESPONSE TO ARGUMENTS

5. Applicant's arguments filed on 09/11/2003 have been fully considered but they are not persuasive.

#### REMARKS

6. In response to claims 1, 4 and 7, Applicant continues to argues that the reference Abelow does not teach or suggest the recited feature:

a. "identify multiple actuators" As indicated above, it is believed that Abelow discloses this limitation in col 2, lines 13-27, specifically wherein it is stated that multiple actuators or computer hardware, software and communications technologies to construct a module that is built into certain products and services, to establish a network. Please note multiple actuators are interpreted as a network of internal organization interactions in the area of computer-based performance, and also see., col 31 lines 24-39, specifically wherein said identify common strengths (or identify multiple actuators), weakness and customer-based suggestion for improvements).

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b. "identify a force applied by the actuators". However, the Examiner respectfully disagrees with this assertion since Abelow discloses this limitation in col 2, lines 13-27, specifically wherein it is stated that multiple actuators or computer hardware, software and communications technologies to construct a module that is built into certain products and services, to establish a network. Please note multiple actuators are interpreted as a network of internal organization interactions in the area of computer-based performance, and also see., col 31 lines 24-39, specifically wherein said identify common strengths, weakness and customer-based suggestion for improvements, these are forces or structure applied by the actuator or computer-based forces for product features).

c. "actuator controller is responsive to price information". As noted above, Abelow discloses this limitation in col 28, lines 38-46, specifically wherein said Conducting transactions 1086, 1088, 1090 in FIG. 31 (Instead of a Development Interaction, what could be displayed is an offer specific to the user's immediate need such as, "We will start fixing this problem within six hours if you buy an on-site service contract at this time. Would you like right now: (1) the price and terms of a service contract, (2) a way to buy this through your computer, and (3) an immediate service call?" The reply is Yes or No, and if Yes is selected. Please note that the price and terms are controlled by the actuator [or computer-based]).

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre E. Elisca whose telephone number is 703 305-3987. The examiner can normally be reached on 6:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703 305-9769. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Pierre Eddy Elisca

**Primary Patent Examiner**

**July 18, 2005**